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IN THE

Supreme Court of the United States

October Term, 1965
No. 1028

LOUIS LESSER, *et al.*,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

MOTION. TO REMAND

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Reason for Motion.

Subsequent to the order of this Court herein denying certiorari, respondent issued a revenue ruling, just reported, Rev. Rul. 66-111, I.R.B. 1966-19, 6, the holding of which is based on the opinions herein of the courts below. That ruling indicates that, in respondent's own view now. as also clearly and precisely shown in the Motion below, he was in error in his Memorandum in Opposition herein in saying that the useful life of the building involved was determined by the Tax Court on the basis of the building as remodeled.

Petitioners, nevertheless, well realize the burden which reconsideration of the petition for certiorari on a petition for rehearing, however justified, would place upon this Court. For that reason they file this motion. which avoids any re-examination by this Court, sharply nar-

rows the issue, and places any onus for re-examination of the issue as narrowed upon the parties and the Tax Court. We most strongly urge this Court to allow this motion, in the interest of a question which the aforesaid ruling shows is of the highest importance.

Motion.

Petitioners now move the Court for (1) an order upon respondent to show cause why he would oppose a remand to the Tax Court solely for findings and decision based on the building involved as remodeled, and (2) unless respondent shows good cause, an order for such remand. As grounds for this motion petitioners show as follows:

Respondent, in his Memorandum in Opposition, contends, at page 4, that the Tax Court's opinion, "that the property was not a unique, single-purpose building," relates to the building as remodeled—this despite the fact that the Tax Court's only finding in that regard, 42 T.C. at page 696, relates expressly to the building "as originally designed and constructed." Respondent also says, at page 6, that the determination of the Tax Court as to useful life relates to the building both "before and after remodeling"—this despite the fact that the Tax Court's only determination of useful life, 42 T.C. at page 706, was expressly of the remaining useful life of the building "when acquired."

It is obvious, in any event, from both of said contentions of respondent that respondent agrees with petitioners that the depreciation should be based on the building as remodeled. It would appear inconceivable

then that respondent would oppose a remand to the Tax Court solely to make findings and decision based on the building as remodeled. If the Tax Court intended that its findings above pointed out relate also to the building as remodeled, it could easily now say so.

Wherefore, petitioners pray that this motion be granted.

Respectfully submitted,

GEORGE T. ALTMAN,

Attorney for Petitioners.

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Certificate of Counsel.

I am attorney of record for Petitioners and certify that in my judgment this Motion is well founded and that it is not interposed for delay.

GEORGE T. ALTMAN

Dated, Los Angeles, California,
May 19, 1966.